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Raised Bill 6925  
Public Hearing: 3-6-15

**TO: MEMBERS OF THE JUDICIARY COMMITTEE**  
**FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION**  
**DATE: MARCH 6, 2015**

**RE: SUPPORT RAISED BILL 6925 – AN ACT CONCERNING THE STATUTE  
OF REPOSE IN HAZARDOUS CHEMICAL CASES RESULTING IN  
DEATH OF A PERSON**

Chairman Coleman, Chairman Tong and members of the Judiciary Committee:

My name is Christopher Meisenkothen and I am a lawyer with Early, Lucarelli, Sweeney & Meisenkothen in New Haven, CT. I am a resident of Durham, CT and I am here today on behalf of the Connecticut Trial Lawyers Association. I testify today in support of HB 6925 and urge its passage.

With me today are two of my clients – Marsha Lagerberg and James Stempert – who are presently being affected by the fundamental unfairness that HB 6925 is seeking to correct:

- Marsha Lagerberg is a resident of Brooklyn, CT, having moved there recently after a life spent in greater Killingly, CT. She is a constituent of Senator Flexer, who sits on this Committee. Marsha's husband of forty-four years, Erick Lagerberg, died from malignant mesothelioma in 2011 caused, in part, by his prolonged environmental exposure to asbestos pollution from a nearby factory that was using hundreds of tons of raw asbestos fiber.
- Jim Stempert is a resident of Oxford, CT. He is a constituent of Representative Labriola, who also sits on this Committee. Jim's father, Charles Stempert, died from malignant mesothelioma in 2012 caused, in part, by his prolonged environmental exposure to asbestos pollution from other local factories that also used hundreds of tons of raw asbestos fiber.

HB 6925 resolves an important injustice with the existing statute of limitation for claims arising from exposure to hazardous chemicals and substances, such as asbestos contamination, fracking waste, polluted groundwater, MTBE contamination, power plant emissions, radiation exposures, and other types of persistent toxic environmental pollution.

General Statutes § 52-577c provides a two-year "discovery rule" statute of limitation for *personal injury* and *property damage* arising from exposure to hazardous chemicals and substances that are released into the environment. The statute noticeably omits death from its

purview, however. Because § 52-577c omits the word “death,” all claims for death arising from exposure to hazardous chemicals fall, by default, under the 5-year statute of repose in § 52-555 for wrongful death cases. This is particularly problematic given the long latency period associated with injuries caused by exposure to hazardous chemicals and substances. A victim who was exposed to hazardous chemicals and substances benefits from the two-year discovery statute in § 52-577c while he is still alive, but if that same victim dies, then his claims arising from his death and his loss of life are literally ejected from the courthouse by the application of the 5-year statute of repose in § 52-555. Section 52-577c should be amended to clarify that if death results from an exposure to a hazardous chemical or toxic pollutant, then claims arising from that death fall within the already-existing two-year discovery statute under 52-577c, just like claims for personal injury and property damage. HB 6925 is consistent with the well-established public policy of this State to allow claims for long-latent injuries to proceed on their merits.

The Connecticut Supreme Court itself has previously acknowledged this harsh, unfair result in 2006 when it dismissed wrongful death lawsuits for a group of workers who had sustained toxic chemical exposures and developed fatal conditions, such as brain cancers. While explaining the rationale behind statutes of limitation and statutes of repose, the Supreme Court acknowledged “that applying the limitation period of § 52-555 to the present case leads to what reasonably may be characterized as a harsh, and even unfair result. . . . It is not the function of the court to alter a legislative policy merely because it produces unfair results . . . . Thus, the fact that the decedents could not have known that they had been injured prior to the expiration of the limitation period of § 52-555 does not warrant a result that is contrary to the expressed intent of the legislature.” See Greco v. United Technologies Corp., 277 Conn. 337, 353-54 (2006).

Almost twenty years before *Greco*, in a different type of case, the Supreme Court had previously noted that the repose period of § 52-555 is “unfair at times.” Ecker v. West Hartford, 205 Conn. 219, 240 (1987).

**It is unconscionable to think that claims for general personal injuries and claims for property damage arising from environmental pollution fall under § 52-577c but claims for the most serious personal injury of all – death – do not.**

This fundamental unfairness and injustice for deceased victims can be effectively remedied by simply making two small additions to the statute as noted in HB 6925. The word “death” should be added to the list of covered claims, which already includes “personal injury” and “property damage,” and by adding a reference to “§ 52-555” so the statute is clear that the repose period of § 52-555 does not apply to death claims arising from exposure to hazardous chemicals and substances.

This Legislature has a long history of remedying unfair and arbitrary statutes of limitation and repose when it comes to latent injuries:

- In 1959, the Legislature eliminated the 5-year statute of repose for workers’ compensation claims arising from occupational diseases, largely in response to concerns about long-latent injuries suffered by workers from radium poisoning in the factories of local watch manufacturers.

- In 1980, the Legislature extended the original 1-year workers' compensation occupational disease statute to 3 years in recognition of the fact that many occupational diseases are latent in nature.
- In 2011, the Legislature extended the Product Liability Act's statute of repose for asbestos cases to 80 years, again in recognition of the fact that asbestos-related injuries are latent in nature.

Thank you for your time and consideration. Please pass HB 6925.